United Nations CCPR/C/110/D/2155/2012

International Covenant on Civil and Political Rights

Distr.: General
29 April 2014

Original: English

Human Rights Committee

Communication No. 2155/2012

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Rolandas Paksas (represented by counsel, Stanislovas Tomas)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	24 June 2011 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 6 June 2012
Date of adoption of Views:	25 March 2014
Subject matter:	Restrictions to the right to participate in public life
Procedural issues:	Inadmissibility *ratione materiae*
Substantive issues:	Right to participate in public life and vote in free and fair elections
Articles of the Covenant:	Article 14, paragraphs 1 and 2; article 15; article 25 (a), (b), (c)
Articles of the Optional Protocol:	Article 3; article 5, paragraph 2 (b)

GE.14-42801

1442801

Please recycle

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 2155/2012*

Submitted by:	Rolandas Paksas (represented by counsel, Stanislovas Tomas)
Alleged victim:	Rolandas Paksas
State party:	Lithuania
Date of communication:	24 June 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2014,

Having concluded its consideration of communication No. 2155/2012, submitted to the Human Rights Committee by Mr. Rolandas Paksas under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Rolandas Paksas. He claims that Lithuania[1] has violated his rights under articles 14 (paras. 1 and 2), 15, and 25 (a), (b) and (c) of the International Covenant on Civil and Political Rights. Mr. Paksas is represented by Stanislovas Tomas.

The facts as submitted by the author

2.1 The author was elected President of the Republic of Lithuania on 5 January 2003 in direct and democratic elections. On 11 April 2003, the author issued Decree No. 40,

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.
The text of an individual opinion by Committee member Mr. Gerald L. Neuman is appended to the present Views.

[1] The Optional Protocol entered into force for the State party on 20 February 1992, without reservation.

countersigned by the Minister of the Interior, granting Lithuanian citizenship by way of exception for service to Lithuania, to a Russian businessman, Jurij Borisov — who had been awarded the Medal of Darius and Girėnas for service to Lithuania for his efforts to glorify the name of Lithuania in the world and for assisting Lithuania in its integration into the world community of States, by the author's predecessor, Valdas Adamkus, via Presidential Decree No. 1373(2001).

2.2 On 6 November 2003, the Lithuanian Parliament (Seimas) requested the Constitutional Court to advise whether Presidential Decree No. 40 was in compliance with the Constitution and with the Citizenship Act. The Seimas submitted that the procedure of granting citizenship on an exceptional basis appeared to have been applied inappropriately, considering that Mr. Borisov had no special merit warranting exceptional treatment for him, and that the author had granted him citizenship as a reward for his substantial financial assistance to his election campaign.

2.3 The author submits that on 8 December 2003, the main impeachment initiator, Gintaras Steponavicius, Vice-President of the Seimas, met with Egidijus Kūris, President of the Constitutional Court, and that they discussed the granting of citizenship to Mr. Borisov. On 18 December 2003, 86 members of the Seimas submitted a proposal to initiate impeachment proceedings against the author. On 23 December 2003, the Seimas set up a special commission to investigate the allegations about the author's conduct. On 19 February 2004, the special investigation commission concluded that some of the charges made against the author were founded and serious, and it recommended that the Seimas institute impeachment proceedings. On the same day, the Seimas requested the Constitutional Court to determine whether the specific acts of the author cited by the commission had breached the Constitution.

2.4 On 31 March 2004, the Constitutional Court adopted Ruling No. 14/04 declaring a gross breach of the Constitution and of the author's constitutional oath on three points:

(a) Unlawfully granting citizenship to Mr. Borisov by Decree No. 40 as a reward for his financial support;

(b) Informing Mr. Borisov that the law enforcement institutions were investigating him and tapping his telephone conversations; and

(c) Exploiting his official status to influence decisions of the private company Žemaitijos keliai Ltd. concerning the transfer of shares, with a view to defending the property interests of certain private individuals close to him.

2.5 On 6 April 2004, the Seimas voted in favour of the impeachment. The author wished to stand as a candidate in the presidential election called for 13 June 2004. On 22 April 2004, the Central Electoral Committee found that there was no legal ground to prevent him from standing. However, on 4 May 2004, Parliament amended the Presidential Elections Act by inserting the following provision: "A person who has been removed from parliamentary or other office by the Seimas in impeachment proceedings may not be elected President of the Republic if fewer than five years have elapsed since his removal from office." Following this amendment, the Central Electoral Committee refused to register the author as a candidate. The issue was forwarded to the Constitutional Court.

2.6 On 25 May 2004, the Constitutional Court held (in Ruling No. 24/04) that disqualifying a person from standing for election was compatible with the Constitution, but that subjecting such a disqualification to a time limit was unconstitutional. The Court further pointed that the spirit of the Constitution prohibits the author from standing for presidential or parliamentary elections and from being a prime minister, minister, judge or state controller, for life. On 15 September 2008, Parliament amended the Law on Local

Self-Government. The author considers that this amendment prohibits him, as an impeached president, from standing for local election.

2.7 On 21 October 2004, the Prosecutor General discontinued the criminal investigation into allegations that the author had abused his office as President in order to influence decisions made by the Žemaitijos keliai company concerning the transfer of its shares in violation of article 228 of the Criminal Code.

2.8 On 13 December 2005, the Lithuanian Supreme Court acquitted the author of the charge of informing Mr. Borisov that the law enforcement institutions were investigating him and tapping his telephone conversations.

2.9 On 27 September 2004, the author lodged an application against Lithuania with the European Court of Human Rights. In its judgement of 6 January 2011,[2] the European Court held that Lithuania had violated article 3 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and considered that the author's disqualification from holding parliamentary office was disproportionate because of its permanent and irreversible nature. The remainder of the author's complaint was declared incompatible *ratione materiae* with the Convention. Following the European Court's judgement, the Government formed a working group to make proposals for carrying it out. On 31 May 2011, the working group submitted its conclusions, stating that it was necessary to remove the irreversible and permanent nature of the disqualification for persons removed from office following impeachment proceedings for committing a gross violation of the Constitution and breaching the constitutional oath. The proposed constitutional amendments were approved by the Government on 6 June 2011, but the Constitutional Court held them to be unconstitutional on 5 September 2012.

The complaint

3.1 The author claims a violation of articles 14 (paras. 1 and 2), 15 and 25 (a), (b) and (c) of the International Covenant on Civil and Political Rights.

3.2 The author considers that his complaint must be held admissible because: (a) he submitted it on 24 June 2011 and therefore did not delay in addressing the Committee after Judgement 34932/04 of the European Court of Human Rights, issued on 6 January 2011; and (b) the right to stand for presidential elections is not covered *ratione materiae* by the European Convention for the Protection of Human Rights and Fundamental Freedoms,, and was therefore not examined by the European Court.[3]

3.3 With regard to the exhaustion of domestic remedies, the author refers to the amendment of the Law on Local Self-Government adopted on 15 September 2008 introducing a prohibition on an impeached president standing for local elections. According to the author, domestic litigation on this point would relate to general legislation and would not serve his purpose.

3.4 The author refers to Ruling No. 24/04, in which the Constitutional Court gave its interpretation that it shall be prohibited to organize a referendum to determine whether the author violated the Constitution and whether the lifelong prohibition on standing for election must be revoked, which he claims was in violation of article 25 (a) of the Covenant. The author states that this breach was mentioned in his application to the European Court of Human Rights, but was not examined.

[2] See European Court of Human Rights Judgement 34932/04, *Paksas* v. *Lithuania*, 6 January 2011.

[3] Ibid., para. 72.

3.5 On the merits, the author considers that the lifelong prohibition on standing for presidential and local elections was not established by law, is not objective, is not reasonable, and is disproportionate, therefore violating his rights under article 25 (a) and (b) of the Covenant. In this respect, the author makes reference to the Committee's jurisprudence in *Dissanayake* v. *Sri Lanka*, where the Committee recognized that a seven-year prohibition on standing in elections following a breach of the Constitution was disproportionate.[4]

3.6 The author argues that there was no fair trial, and that the requirement of procedural fairness as set out in article 25 (c) was violated, including through the meeting held on 8 December 2003 between the Vice-President of the Seimas and the President of the Constitutional Court, where they discussed the granting of citizenship to Mr. Borisov. On 16 March 2004, the author's lawyers submitted a motion for the removal of Justice Kūris on account of this meeting, but it was denied. The author therefore considers that the right to objective impartiality as developed in the jurisprudence of the Committee[5] was breached by the Constitutional Court.

3.7 The author also argues that the Constitutional Court was biased in two respects. Firstly, on 5 January 2004, the Constitutional Court made a comment on the author's New Year speech. Secondly, on 16 March 2004, the President of the Constitutional Court commented during the hearings that the motion for removal of the judges made by the author could be dismissed without consideration.[6]

3.8 The author considers that the Seimas exercised continuous pressure on the courts. For example, on 25 March 2004, it issued a "Declaration on the actions of President Rolandas Paksas", stating that the finding of the author's guilt by the Constitutional Court was "just a matter of time" and that "having regard to the fact that the impeachment proceedings would last for quite a long period, [the Seimas] proposes to Rolandas Paksas, President of the Republic, to resign". According to the author, the Seimas was sure of the outcome of the ongoing impeachment proceedings, thereby breaching article 14, paragraph 2, of the Covenant.

3.9 The author argues that Constitutional Court Ruling No. 24/04 states that the lifelong prohibition on his standing for election and being appointed to offices requiring a constitutional oath is based on a presumption of guilt that is contrary to article 14, paragraph 2, of the Covenant, and was applied to him retrospectively in breach of article 15 of the Covenant.

3.10 The author states that the lifelong prohibition on holding the office of Prime Minister or Minister was introduced, for the first time, with Ruling No. 24/04 of the Constitutional Court on 25 May 2004 which was implemented after the acts of the author but before the end of the impeachment proceedings. The Seimas amended the Parliamentary Elections Act and the Presidential Elections Act accordingly.

3.11 The author considers that the principle of objectivity was violated because of the breach of basic procedural fairness, and because of the discrimination he suffered as compared to political opponents. The author reiterates the arguments developed with regard to the alleged violation of article 14 of the Covenant, arguing that neither of the two

[4] See communication No. 1373/2005, *Dissanayake* v. *Sri Lanka*, Views adopted on 22 July 2008, para. 8.5.

[5] See communication No. 1015/2001, *Perterer* v. *Austria*, Views adopted on 20 July 2004, para. 10.4.

[6] "The motion for removal might be denied together (with the request for leave to present video evidence), but such a question must be decided in the Deliberation Room. However until now you have not presented the reasons for removal."

previous presidents were subjected to lifelong restrictions, despite granting citizenship on an exceptional basis, "for merits", in "much more controversial" cases. Referring to the Committee's jurisprudence,[7] the author considers that the sanction imposed on him is disproportionate and violates article 25 of the Covenant.

3.12 In a further submission dated 9 June 2012, the author argues that the Committee should examine the prohibition on the organizing of a referendum on the question of whether the author had violated the Constitution following Constitutional Court Ruling No. 24/04, and on the question of whether the lifelong prohibition on standing for election must be revoked. The author also considers that, while the issue of the right to a fair trial was held inadmissible by the European Court of Human Rights, it should be considered admissible by the Committee in compliance with its jurisprudence.[8]

3.13 In this regard, the author considers that the impeachment proceedings were of a criminal nature, as they were initiated following alleged criminal offences. The author also observes that according to article 246 of the Seimas Rules of Procedure, which were in force from February 1999 to November 2004, the impeachment proceedings had to comply with the "principles and fundamental rules of criminal proceedings". The author further considers that the impeachment proceedings before the Constitutional Court are a suit at law, since a group of members of the Parliament officially made an accusation against him before the Constitutional Court, and since the recognition of the breach unavoidably led to his removal from office. The author therefore argues that articles 14 and 15 are applicable.

3.14 The author argues that the Constitutional Court usurped the will of the people, removing their right to vote for the author and thereby threatening democracy. The author further observes that the Constitution does not include any *expressis verbis* ban on being re-elected after an impeachment.

3.15 The author considers that the Constitutional Court's ruling of 5 September 2012 amounts to a refusal to execute the judgement of the European Court, which required the re-establishment of the author's right to stand in parliamentary elections and violates article 25 of the Covenant.

3.16 The author therefore seeks recognition of violations of articles 14 (paras. 1 and 2), 15 and 25 of the Covenant, and the re-establishment of his right to stand for presidential, parliamentary and local elections and to hold offices that require a constitutional oath.

State party's observations on admissibility and on the merits

4.1 In its notes verbales dated 21 September 2012 and 5 December 2012, the State party submitted its observations. The State party considers that the communication must be declared inadmissible and without merit insofar as the author's allegations are incompatible with the provisions of the Covenant and are unsubstantiated.

4.2 The State party considers that the impeachment proceedings are a form of constitutional liability and cannot be equated to disciplinary proceedings against civil

[7] The author refers to communication No. 1373/2005, *Dissanayake* v. *Sri Lanka*, op. cit.; communication No. 1134/2002, *Fongum Gorji-Dinka* v. *Cameroon*, Views adopted on 17 March 2005; and communication No. 1392/2005, *Lukyanchik* v. *Belarus*, Views adopted on 21 October 2009, para. 8.5.

[8] The author refers to communication No. 1774/2008, *Boyer* v. *Canada*, decision on inadmissibility adopted on 27 March 2009, para. 4.2; communication No. 1015/2001, *Perterer* v. *Austria*, op. cit., para. 9.2; and communication No. 1454/2006, *Lederbauer* v. *Austria*, Views adopted on 13 July 2007, para. 7.2.

servants or to criminal charges.[9] The purpose of the impeachment case instituted against the author was to determine whether he had committed gross violations of the Constitution and whether his constitutional oath had been breached. The State party considers that the impeachment proceedings did not concern the determination of the author's rights and obligations in a suit at law; instead, they involve the head of State's constitutional liability and therefore lie outside the criminal sphere.

4.3 The State party also considers that the author is incorrect in arguing that the gross violations of the Constitution for which he was removed from office should have been proved in a criminal court. This interpretation perverts the provisions of the Constitution on impeachment, as not all the grounds of the impeachment are related to the commission of a criminal act. According to the Constitution, criminal prosecution cannot be instituted against the President of the Republic as long as he is in office (article 86 of the Constitution).

4.4 The State party argues that even after the Constitutional Court concluded that the author had breached his oath and had violated the Constitution, he still had the possibility of resigning from office in order to avoid full constitutional liability. The specific restriction at issue is applicable only in cases where the Seimas removes a person from office by not less than a three-fifths majority vote following a relevant conclusion of the Constitutional Court. The State party argues that the author did not avail himself of the said opportunity to resign from office. It considers that a final decision by Parliament is the grounds for applying a constitutional sanction, and that article 14 of the Covenant is not applicable to proceedings before Parliament.

4.5 The State party further considers that the acquittal of the author on 13 December 2005 for disclosure of classified information cannot change the conclusion of the Constitutional Court that the author grossly violated the Constitution.[10] The impeachment procedure does not involve the determination of any criminal charge or of rights and obligations in a suit at law within the meaning of article 14 of the Covenant. This part of the communication should therefore be declared inadmissible *ratione materiae* under article 3 of the Optional Protocol.[11]

4.6 Should the Committee consider otherwise, the State party argues that the author's allegations concerning alleged violations of article 14, paragraphs 1 and 2, of the Covenant are unsubstantiated. In that regard, the State party considers that the author's communication seeks the re-examination of the legality of the constitutional sanction imposed on him, and refers to the jurisprudence of the Committee, under which: "it is in principle for the courts of States parties to evaluate the facts and evidence, unless the evaluation of the facts and evidence was manifestly arbitrary or amounted to a denial of justice"[12]. The State party considers that this is clearly not the case in regard to the complaints made by the author. The State party recalls that Lithuanian law provides for a number of safeguards to protect persons implicated in impeachment proceedings from arbitrary treatment, as the rules of criminal procedure and fair trial principles apply to impeachment proceedings. While the decision to initiate such proceedings and to apply a sanction are the prerogative of the Seimas, a political body, it is the task of a judicial body, the Constitutional Court, to rule on whether there has been a violation of the Constitution. If

[9] See communication No. 1015/2001, *Perterer* v. *Austria*, op. cit., para. 9.2.

[10] Constitutional Court's conclusion of 31 March 2004.

[11] Communication No. 1419/2005, *De Lorenzo* v. *Italy*, decision on inadmissibility adopted on 24 July 2007.

[12] Communications No. 1329/2004 and No. 1330/2004, *Pérez Munuera and Hernández Mateo* v. *Spain*, decision on inadmissibility adopted on 25 July 2005.

the Court finds no such violation, the Seimas cannot remove the official from office. Furthermore, when conducting impeachment proceedings, the Seimas is presided over by a judge of the Supreme Court, and it cannot remove a person from office other than by a three-fifths majority of its members in a reasoned decision. Lastly, the author was assisted by numerous counsels, and was able to provide his evidence during public hearings.[13]

4.7 The State party considers that the author has not submitted any reasoned arguments on the alleged arbitrariness and unfairness of the proceedings. Regarding the alleged bias of the Constitutional Court in its public statement of 5 January 2004 issued in reaction to the author's speech of 31 December 2003, the State party considers that the Court clearly refrained from engaging in any political polemics.

4.8 As regards the alleged bias resulting from the meeting between the President of the Constitutional Court and the Vice-President of the Seimas, the State party considers that these allegations are unsubstantiated, as the impeachment proceedings had not been initiated at that time. The State party considers that the Committee's jurisprudence in *Dissanayake* v. *Sri Lanka*[14] cannot be applied to the author's case because the restrictions referred to were not linked to the author's arbitrary conviction and sentence. Additionally, the State party considers that the gravity of the author's unconstitutional conduct cannot be compared to that of Mr. Dissanayake, who was convicted for contempt of court. The State party considers that the present case also differs from the Committee's case of *Bandaranayake* v. *Sri Lanka*,[15] since the restriction imposed on the author's rights was the result of his removal under the constitutional impeachment proceedings (and not following criminal liability), without any kind of arbitrariness.

4.9 As regards the author's complaint under article 14, paragraph 2, of the Covenant, for alleged violation of the presumption of innocence, the State party considers that the author is perverting Lithuanian law by equating the impeachment proceedings with criminal or disciplinary law issues.

4.10 The State party further considers that when blaming the Seimas for breaching the presumption of his innocence, the author did not mention that the declaration that suggested his resignation from presidential office was made following his invitation to Mr. Borisov to become his public adviser on 24 March 2004, and following the declaration that the author made on television the next day to apologize for that invitation, which he qualified as a "fatal mistake". The State party considers that the declaration of the Seimas responded to the vulnerability of the President, as reflected in the conviction of Mr. Borisov for the use of psychological abuse against him. The State party therefore considers that the author's allegations concerning violation of article 14 of the Covenant are unsubstantiated.

4.11 As to the alleged violation of article 15 of the Covenant for the alleged arbitrary and retrospective application of a constitutional sanction, the State party refers to the Committee's jurisprudence under which article 15, paragraph 1, prohibits the retroactive application of laws only in relation to criminal law matters.[16] The measures of removal from office and (consequent) disqualification from standing for election involve the Head of State's constitutional liability and lie outside the "criminal" sphere.

4.12 Should the Committee consider otherwise, the State party maintains that the author's allegations concerning violations of article 15 of the Covenant are unsubstantiated and

[13] See judgement of the Grand Chamber, 6 January 2011, Application No. 34932/04, § 102.

[14] Op. cit.

[15] Communication No. 1376/2005, *Bandaranayake* v. *Sri Lanka*, Views adopted on 24 July 2008.

[16] Communication No. 1994/2010, *I.S.* v. *Belarus*, decision on inadmissibility adopted on 25 March 2011.

without merit. The constitutional sanction was not applied retrospectively, as it entered into force on the day on which the author was removed from office by the Seimas, and procedural safeguards were respected. Furthermore, the State party argues that the restriction adopted was not unforeseeable: in its ruling of 25 May 2004, the Constitutional Court further developed the concept of the irreversible nature of a constitutional sanction resulting from impeachment, already known since the ruling of the Constitutional Court of 11 May 1999. If the author had doubts as to the consequences of the constitutional liability, he could have requested the interpretation and revision of this ruling to the Constitutional Court under articles 60 and 61 of the Law on the Constitutional Court.

4.13 New amendments to the Law on Seimas Elections and to the Law on Presidential Elections were adopted in May and July 2004 respectively, with the aim of specifying the constitutional provisions and lessening the sanctions applicable following impeachment proceedings. The Constitutional Court declared those provisions unconstitutional. The State party considers that this decision was not unforeseeable for the author, and concludes that the alleged violation of article 15 of the Covenant should be held to be unsubstantiated and without merit.

4.14 As regards the alleged violation of article 25 of the Covenant, the State party considers that the scope and content of the constitutional sanction is clearly, precisely and narrowly defined, as the prohibition exclusively relates to passive presidential and parliamentary election rights, and positions requiring a constitutional oath. The right to vote and to participate in the conduct of public affairs is not restricted, as demonstrated by the author's political activities after his removal from presidential office.

4.15 As to the alleged violation of the author's right to initiate a referendum, the State party argues that the impeachment procedure is clearly regulated. The removal of a person or the revocation of his/her mandate and the imposition of subsequent constitutional sanctions cannot be decided by way of referendum. The State party considers that the complaint by the author on this matter is incompatible *ratione materiae* with the provisions of the Covenant: the author could have initiated a referendum for amendment of the respective constitutional provisions under article 9§3 of the Constitution. The State party therefore considers that the author's complaint under article 25 (b) of the Covenant is inadmissible and without merit.

4.16 The State party further argues that the author has never been prevented from standing for municipal elections. He was listed as the first candidate of his political party for the Municipality of Vilnius City at the municipal elections of February 2007, and he was a member of Vilnius City Council from March 2007 to June 2009. The State party also argues that the amendments introduced in 2008, to article 22 of the Law on Local Self-Government, do not affect the author's rights insofar as the oath introduced for new members of the Self-Government Council is different from the constitutional oath. The author's claim under article 25 of the Covenant concerning his inability to stand for municipal elections is therefore without merit.

4.17 As regards the author's inability to stand for parliamentary elections, the State party considers that the author does not refer to any particular elections where he would have been prevented from exercising his right to do so. The State party considers that, in compliance with the jurisprudence of the Committee,[17] the author cannot claim to be a victim within the meaning of article 1 of the Optional Protocol.

[17] Communication No. 1038/2001, *Dáithí Ó Colchúin* v. *Ireland*, decision on inadmissibility adopted on 28 March 2003.

4.18 Should the Committee consider otherwise, the State party argues that the author failed to exhaust domestic remedies with regard to his inability to stand for parliamentary elections. If the author had expressed his intention to become a member of the Seimas in October 2004 and October 2008 and the Supreme Electoral Commission had refused to register him as a candidate, he could have applied to the administrative courts for alleged interference with his right to do so. The Committee is therefore precluded from considering this part of the communication pursuant to article 5, paragraph 2 (b), of the Optional Protocol. The State party argues that this position is supported by the recent reforms adopted by the Government following the judgement of the European Court of Human Rights.

4.19 The State party further considers that the newness of the democratic regime in Lithuania justifies the maintaining of the existing constitutional sanction, even though it might appear excessive in a well-established democracy. Only eight years have elapsed since the author's removal from presidential office. The restriction on standing for election can still be regarded as reasonable and proportional to the constitutional offences that he committed. Constitutional amendments were proposed and approved by the Government on 6 June 2011 and transmitted to the Seimas. It was decided to make relevant changes to the Law on Seimas Elections, and relevant constitutional amendments will be introduced in the very near future.

4.20 In respect of the alleged violation of article 25 (b) of the Covenant regarding the restriction on standing for the presidential elections, the State party refers to the jurisprudence of the Committee under which the exercise of the right to vote and to be elected may not be suspended or excluded except on objective and reasonable grounds that are established by law[18] and are compatible with the purpose of the law.[19] The State party reiterates that no criminal liability was applied to the author, and that only his passive right to stand for the presidential elections was restricted. Although of an irreversible nature, the constitutional restrictions are proportionate to the aim pursued and to the gravity of the related breaches. The State party concludes that the author has failed sufficiently to substantiate his claim under article 25 (b), which should therefore be held inadmissible under article 2 of the Optional Protocol.

4.21 As to the reasonableness of the constitutional restriction on standing in presidential elections, the State party reiterates that its aim is to prevent any person who has grossly violated the Constitution and breached his/her constitutional oath from holding the office provided for in the Constitution. The constitutional restriction relates to the same office from which the author was removed. Given that the aim of the impeachment procedure is to protect and strengthen the democratic constitutional order and national security, the restriction must be considered as reasonable. Similar restrictions of a permanent nature exist in the legislation of other democratic States (such as the United States of America, the Czech Republic, Slovakia and Poland).

4.22 The State party further emphasizes that the constitutional restriction on standing in presidential elections only applies to categories of persons that are clearly defined in law, and there is no doubt that, as former President of the Republic, the author belongs to that group. The constitutional restriction could therefore not be described as discriminatory. The State party further recalls that since the restoration of the independence of Lithuania, seven

[18] General comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, para. 4.; and communication No. 1177/2002, *Fongum Gorji-Dinka* v. *Cameroon*, op. cit.

[19] Communication No. 500/1992, *Joszef Debreczeny* v. *Netherlands*, Views adopted on 3 April 1995.

similar procedures have been initiated in respect of other serving presidents. The restriction at issue is precisely worded; it applies in the same way to anyone and it is objective.[20]

4.23 The State party highlights the particular responsibilities of the President of the Republic of Lithuania, who is expected to set an example. It argues that the author still does not acknowledge the gravity and seriousness of the breaches that he committed, and concludes that the author expects the European Court of Human Rights and the Human Rights Committee to justify the gross violations that he consciously carried out. It considers that the restriction imposed is proportionate with the seriousness of the acts, and is neither discriminatory nor arbitrary.

4.24 As regards the alleged violation of article 25 of the Covenant regarding the author's inability to become a judge, state controller, prime minister or minister, the State party considers that the author has not provided any arguments or evidence. It reiterates the arguments presented as to the inapplicability of article 14 of the Covenant *ratione materiae* and considers that the present communication has nothing to do with the right not to be arbitrarily dismissed from public service.[21] The State party also submits that the author's claims relating to his inability to become a judge or a state controller are merely hypothetical, because he does not meet the specific eligibility requirements for any of those offices. It therefore considers that the author has no actual grievance to claim under article 25 of the Covenant and that his claim is inadmissible under articles 1 and 2 of the Optional Protocol. As to the author's complaint regarding his inability to become a prime minister or minister, the State party considers that the author does not demonstrate that he actually intended to stand for those positions and was prevented from doing so. Accordingly, he cannot claim to be a "victim" within the meaning of article 1 of the Optional Protocol.

Author's comments on the State party's submissions

5.1 On 30 November 2012 and 22 December 2012, the author provided comments on the State party's submissions. The author specifies that he never talked about the possibility of appointing Mr. Borisov as public adviser to the President, but only as a "voluntary (unpaid) adviser", and that the appointment never actually took place.

5.2 With regard to the argument of the State party that the author did not intend to stand for presidential elections or to become a minister during the last eight years, the author considers that his intention to stand for presidential elections or to become a minister would have been rejected in compliance with the very clear ruling of the Constitutional Court of 25 March 2004. Additionally, while the political party led by the author became part of the government coalition after the parliamentary elections of October 2012, the author could not become a minister since the lifelong prohibition was still in force.

5.3 The author maintains that the impeachment proceedings that were applied to his case were criminal, as the sanctions imposed were both deterrent and punitive. He therefore considers that articles 14 and 15 of the Covenant apply, and that the State party failed to present any substantial counterargument in that regard.

5.4 With regard to violation of article 14, paragraph 1, of the Covenant, the author considers that the State party was biased when it tried to justify the Constitutional Court's statement of 5 January 2004, by maintaining that the Constitutional Court had "refrained from political polemics", whereas the Court had actually participated in the related "political polemics" through its statements.

[20] General comment No. 25, op. cit., para. 4.

[21] The State party refers to communication No. 1376/2005, *Bandaranayake* v. *Sri Lanka*, Views adopted on 24 July 2008.

5.5 The author also argues that the State party presents false facts when trying to defend itself, with regard to the meeting between the President of the Constitutional Court and the Vice-President of the Seimas, and he considers that the pressure by the Seimas was not on the ordinary courts but on the Constitutional Court.

5.6 The author considers that the lifelong prohibition on standing for election and on being a minister was justified only by a presumption of guilt, in breach of article 14, paragraph 2, of the Covenant. In addition, he considers that the Seimas declaration of 25 March 2004 was made in breach of the presumption of innocence, prior to the Constitutional Court ruling of 31 March 2004. He argues that by voting to approve the declaration, the Seimas intended to punish the author for his political opinion.

5.7 Considering the State party's statement that he could have addressed the Constitutional Court for an interpretation of the sanction while in office, the author comments that he did not do so because the prohibition did not exist at that time. By introducing the sanction in question, the State party breached article 15 of the Covenant. Additionally, the author considers that article 15 was breached by the "conviction" by the Constitutional Court, whereas he was acquitted by the Supreme Court regarding the alleged disclosure of a State secret, whereas the alleged abuse of office resulting in influencing the decisions of the private company Zemaitijos keliai was discontinued, and whereas the investigation into the alleged buying of citizenship by Mr. Borisov was never started. The author considers that his "conviction" results from an obvious error of assessment and constitutes a denial of justice, representing a breach by the Constitutional Court of the principle of *nulla poena sine lege*.

5.8 The author further argues that the State party violated article 25 (b) of the Covenant through the ruling of the Constitutional Court of 5 September 2012, which declared as unconstitutional the March 2012 amendment to the Law on Seimas Elections. The author considers that this decision amounts to a refusal to execute the European Court judgement requiring the re-establishment of the right to stand for parliamentary elections retrospectively.

5.9 With regard to his right to become a minister, state controller or judge, the author argues that he has sufficient university background to become a state controller and that he may acquire the necessary qualification to become a judge.

5.10 Finally, the author considers that "elections" obviously cannot declare a person innocent, and that the State party's statement to the effect is an attempt to mislead the Committee. The author nevertheless considers that both "elections" and "referendums" may lead to an amendment to the Constitution and that the Constitutional Court prohibited referendums to avoid such an amendment.

State party's additional observations

6.1 In its submission dated 15 March 2013, the State party made additional comments in which it maintained its position that the author's complaints regarding the alleged violations of articles 14 (paras. 1 and 2), 15 and 23 (a), (b) and (c) are incompatible with the Covenant and are unsubstantiated.

6.2 The State party reiterates that the aim and purpose of the impeachment proceedings is to protect the state community and that these proceedings are therefore different from criminal proceedings.

6.3 The State party argues that it did not suggest to the author to apply to the Constitutional Court for the setting of a constitutional sanction, but for a revision of the irreversible nature of the constitutional sanction under review.

6.4 The State party considers that the author's statements regarding the alleged influence of the Seimas on the Constitutional Court are grounded in his personal beliefs, as in its decision of 31 March 2004, the Constitutional Court did not refer to the invitation made by the author to Mr. Borisov, nor to the declaration made by the Seimas suggesting that the author resign from office.

6.5 The State party recalls that the special investigation commission concluded that the charges brought against the author were grounds for instituting impeachment proceedings in the Seimas. It emphasizes that the allegation that the author had unlawfully granted Lithuanian citizenship to Mr. Borisov was only one of the grounds for the impeachment.

6.6 With regard to the author's assertion that the text of the Constitution did not include an *expressis verbis* ban on re-election after impeachment, the State party argues that the official constitutional doctrine is part of the Constitution. The author's statement that the judgement of the European Court of Human Rights of 6 January 2011 required the re-establishment of his right to stand for parliamentary elections retrospectively is misleading and incorrect. The Constitutional Court clearly recognized the duty to remove the incompatibility of the provisions of article 3 of Protocol No. 1 of the Convention with the Constitution, and possible constitutional amendments are under review. Finally, the State party emphasizes that the Constitutional Court did not prohibit a referendum in order to prevent amendment of the restriction at issue. The statement of the Court in its ruling of 25 May 2004 is related exclusively to the finality and non-disputability of its conclusion in respect of a concrete person against whom impeachment procedures had been initiated. It does not mean that the constitutional legal regulation governing the impeachment procedure and its consequences may not be changed by way of referendum or ordinary legislative procedure.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has to ascertain, in accordance with article 5, paragraph 2 (a) of the Optional Protocol, whether the same matter is being examined under another procedure of international investigation or settlement. The Committee notes that the European Court of Human Rights on 6 January 2011 (application No. 34932/04) decided that the author's permanent and irreversible disqualification from holding parliamentary office violated his right to stand in parliamentary elections. The author challenges the Constitutional Court's subsequent ruling of 5 September 2012 as a refusal to execute the judgement of the European Court. The Committee notes that, according to article 46, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the execution of final judgements of the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Ministers, and considers that this matter is currently being actively examined under another procedure of international investigation or settlement. Accordingly, the Committee considers that the part of the communication which relates to the author's lifelong disqualification from parliamentary office is inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, in the present circumstances.

7.3 The Committee notes, however, that the remainder of the author's claims to the European Court of Human Rights, which related to his disqualification from office other than Parliament, was declared incompatible *ratione materiae* with the European Convention. The Committee recalls that the concept of "the same matter" has to be understood as including the same author, the same facts and the same substantive rights.

The Committee notes that article 25, paragraphs (b) and (c), have no equivalent in the European Convention and its Protocols as regards access to public office other than the legislature, and therefore concludes that the communication does not concern the same matter in the sense of article 5, paragraph 2 (a), of the Optional Protocol. The Committee also recalls that when adhering to the Optional Protocol, Lithuania did not enter a reservation to article 5, paragraph 2 (a). Accordingly, the Committee concludes that it is not prevented under article 5, paragraph 2 (a), from considering these claims.

7.4 As regards the alleged prohibition on standing in local elections as a result of the amendments to the Law on Local Self-Government adopted on 15 September 2008, the Committee notes the argument of the State party according to which the amendments do not affect the author's right to stand in local elections, since the oath introduced for new members of the Self-Government Council is different from the constitutional oath that the author is prevented from taking. The Committee considers that the author has not sufficiently substantiated his claims with regard to local elections and declares this claim inadmissible in accordance with article 2 of the Optional Protocol.

7.5 As regards the disqualification from serving as a judge or a state controller, the Committee notes the State party's argument that the author is not affected by this disqualification because he does not satisfy the specific prerequisites for these offices. The Committee notes that the author has not obtained a legal education and has not shown that he has taken any concrete steps to obtain such an education in the future. The Committee concludes that the author has not shown that he could be considered a victim of a violation of the Covenant with regard to the disqualification from these offices. This part of the communication is declared inadmissible in accordance with article 1 of the Optional Protocol.

7.6 The Committee notes the author's argument according to which the impeachment proceedings under review were linked to the alleged criminal offences and were therefore of a criminal nature. The Committee also notes that the author claims a violation of article 14, paragraphs 1 and 2, of the Covenant, resulting from an alleged collusion between the President of the Constitutional Court and the member of the Seimas who had initiated the proceedings against him, and from the pressure exercised on the Constitutional Court. The Committee notes that, under the Lithuanian Constitution, the President is immune from criminal liability but can be removed from office and held constitutionally liable through impeachment proceedings,[22] and that the Seimas is the only authority mandated to decide whether the person against whom the proceedings were initiated should be removed from office.[23]

7.7 The Committee recalls that the right to a fair and public hearing by a competent, independent and impartial tribunal is guaranteed in cases regarding the determination of criminal charges against individuals or of their rights and obligations in a suit at law. It further recalls that there is no determination of rights and obligations in a suit at law where the persons concerned are confronted with measures taken against them in their capacity as persons subordinated to a high degree of administrative or parliamentary control,[24] such as the impeachment procedure. In the case under review, the impeachment procedure was

[22] Articles 74 and 86 of the Constitution.

[23] Articles 246 to 258 and 260 of the Statute of the Seimas, and articles 74 and 107 § 3 of the Constitution.

[24] See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 17; and communication No. 1015/2001, *Perterer* v. *Austria*, op. cit., para. 9.2 (disciplinary dismissal).

initiated by the Seimas as a parliamentary procedure, independently of the criminal procedures being followed against the author.

7.8 Similarly, the outcome of the impeachment proceedings was not to charge the author with a "criminal offence" and to hold him "guilty of a criminal offence" within the meaning of article 15 of the Covenant. Accordingly, the author's claims under articles 14 and 15 of the Covenant are incompatible *ratione materiae* with the provisions of the Covenant and are inadmissible under article 3 of the Optional Protocol.

7.9 As regards the alleged violation of article 25, concerning the impeachment procedure and the restrictions adopted, the Committee notes the argument of the State party according to which the author could have applied to the Constitutional Court for an interpretation of its ruling of 11 May 1999, holding that the constitutional sanction imposed in the context of impeachment proceedings was "of an irreversible nature". The Committee also notes the position of the State party that the author could have resigned in order to avoid the impeachment procedure and its outcome. The Committee further notes the argument of the author according to which an application to the Constitutional Court would have been ineffective, as there was no doubt as to the meaning of the phrase "of an irreversible nature", and that under article 107 of the Lithuanian Constitution, the decisions of the Constitutional Court have statutory force and are final. In this respect, the Committee shares the analysis of the European Court of Human Rights according to which a prior request to the Constitutional Court for clarification of whether removal from office entailed lifelong restrictions "could not [...] have prompted an examination of the author's particular situation [...]. It would also have required him to resign voluntarily as President and thereby to accept such a restrictive condition that the remedy in question could not in any event be regarded as 'accessible'." The Committee therefore considers that the author has exhausted all available domestic remedies with regard to the alleged violations of article 25, and that these claims are admissible. The Committee therefore proceeds to a consideration of the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

8.2 Regarding the author's claims under article 25 of the Covenant, the issue before the Committee is whether the lifelong disqualifications adopted against him from being a candidate in presidential elections, or being a prime minister or a minister, amount to a violation of the Covenant.

8.3 The Committee recalls that article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected, and the right to have access to public service. Whatever form of constitution or government is in force, the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by laws that are objective and reasonable, and that incorporate fair procedures.[25]

8.4 The Committee notes the State party's argument that the constitutional sanction restricting the author's rights is proportionate to the gravity of his unconstitutional conduct. It also notes the author's argument that the lifelong disqualifications adopted against him were not established by law, not objective and not reasonable, and are disproportionate. In this regard, the Committee notes the statements made by the Constitutional Court on 5

[25] See general comment No. 25, op. cit., paras. 3, 4 and 16.

January 2004 and on 16 March 2004, insinuating the responsibility of the author prior to the outcome of the proceedings under review. The Committee also notes that on 6 April 2004, when the Seimas decided to remove the author from his office of President, no legal provision expressly stated that he could be barred from standing for election as a result. Accordingly, on 22 April 2004, the Central Electoral Committee authorized the author to stand in the June 2004 presidential election. However, on 4 May 2004, the Seimas introduced an amendment to the Presidential Elections Act stating that anyone who had been removed from office following impeachment proceedings was prevented from standing in presidential elections for a period of five years after those proceedings. Following that amendment, the Central Electoral Committee refused to register the author as a candidate. On 25 May 2004, the Constitutional Court held that such a disqualification was compatible with the Constitution, but that subjecting it to a time limit was unconstitutional, adding that it applied to any office for which it was necessary to take a constitutional oath. On 15 July 2004, the Seimas adopted an amendment to the Elections Act, through which anyone removed from office following impeachment proceedings became ineligible as a Member of Parliament, and could not stand for the offices of President, Prime Minister, Minister, Judge or State Controller. In view of the foregoing, the Committee considers that the lifelong disqualifications on being a candidate in presidential elections, or on being a prime minister or minister, were imposed on the author following a rule-making process that was highly linked in time and substance to the impeachment proceedings initiated against him. Under the specific circumstances of the instant case, the Committee therefore considers that the lifelong disqualifications imposed on the author lacked the necessary foreseeability and objectivity and thus amount to an unreasonable restriction under article 25 (b) and (c) of the Covenant, and that the author's rights under these provisions have been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 25 (b) and (c), of the International Covenant on Civil and Political Rights.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including through revision of the lifelong prohibition of the author's right to be a candidate in presidential elections or to be a prime minister or minister, in light of the State party's obligations under the Covenant. Additionally, the State party is under the obligation to take steps to avoid similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them broadly in the official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion by Committee member Mr. Gerald L. Neuman (partially dissenting)

I fully agree with the Committee's rulings on admissibility. In particular, it is important for the proper performance of the Committee's functions that litigants who have already prevailed in the European Court of Human Rights not be permitted to bring the same issue as a communication under the Optional Protocol merely to seek a second opinion.[26]

Regarding the merits, I would stress the narrowness of the Committee's holding, which results from the unusual manner in which the author's permanent disqualification from standing for certain offices was enacted. The decision should not be misunderstood as calling into question permanent disqualification of impeached office-holders for future elections based on well-established ground rules. A wide variety of States, for example, provide expressly in their constitutions for ineligibility after impeachment as an authorized or mandatory consequence.[27]

Even though the holding is narrow, I disagree with the Committee's conclusion in paragraph 8.4 of its Views that, under the circumstances, the author's permanent ineligibility to stand again for election to the particular office of President violates article 25 of the Covenant.

Impeachment is an extraordinary means for protecting the democratic political process against an otherwise unremovable president who abuses the powers of the office. Impeachments are rare and difficult. An impeachment is not merely a vote of no confidence that contemplates renewed elections to test the president's popular support. It is both reasonable and foreseeable that a president removed by impeachment could be ineligible ever to stand again for election to that sensitive office.

Permanent ineligibility after impeachment is also not a disproportionate consequence for abuse of the office. This Committee has observed that permanent disqualification of citizens who have been convicted of crimes from participating in the political process as voters may violate article 25.[28] Stricter requirements for candidates who seek to exercise great power over others can still be reasonable and proportionate under article 25. If presidents who have successfully completed one or more terms can be permanently ineligible for re-election for the sake of ensuring a healthy and competitive political system, then surely presidents who have been removed for abusing their office can also be permanently barred.

[Done in English. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

---

[26] Cf. communication No. 712/1996, *Smirnova* v. *Russian Federation*, Views adopted on 5 July 2004, paras. 9.3 and 9.4 (finding that the author was no longer a "victim" with regard to an issue on which she had prevailed in the European Court of Human Rights).

[27] See, for example, the constitutions of Angola (art. 65(3)); Argentina (sec. 60); Bangladesh (art. 48(4)); Colombia (art. 175(2)); Madagascar (art. 132); Philippines (art. XI, sec. 3); Slovakia (art. 107); South Africa (art. 89(2)); Timor-Leste (sec. 79); United States of America (art. I, sec. 3).

[28] General comment No. 25, op. cit., para. 14.